

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WALTER HOLMES and ROBERT F.	:	CIVIL ACTION
MAILLEY, II, a/k/a ROBERT	:	
FRANCIS SMITH,	:	No. 05-2909
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, et al,	:	
	:	
Defendants.	:	

MEMORANDUM AND ORDER

JOYNER, J.

August 4, 2005

Via the instant Motion, Defendants City of Philadelphia t/a and/or a/k/a Philadelphia Police Department ("City of Philadelphia"), Police Officer Britton a/k/a Britten a/k/a Brighton ("Officer Britten"), and Police Officer Liston a/k/a Listen a/k/a Listren ("Officer Listren"), seek to dismiss a substantial portion of Plaintiffs' Complaint in this civil rights action. While an Amended Complaint has since been filed in this matter, the substance of the various claims raised against Defendants remains identical.¹ For the reasons that follow,

¹ The only difference between the original Complaint and the Amended Complaint appears to be a modification to the names of the Defendants. The original Complaint named Officers "Britten" and "Listren" as Defendants, while the Amended Complaint names Officers "Britton a/k/a Britten a/k/a Brighton," and "Liston a/k/a Listen a/k/a Listren." As there is no substantive difference in the claims asserted, however, this Court will consider the instant Motion to Dismiss as applied to the Amended Complaint.

Defendants' Motion to Dismiss shall be granted in part and denied in part.

Facts

In their Amended Complaint, Plaintiffs Walter Holmes and Robert F. Mailley, II, a/k/a Robert Francis Smith, allege that they were arrested and handcuffed at a Rite Aid parking lot in Frankford on or about June 19, 2004. Plaintiffs allege that, after being transported to the 25th Police District at Whittaker St., Philadelphia, they were violently and maliciously assaulted by Officers Britten and Listren without reason or instigation. Plaintiffs maintain that the assaults occurred because Defendant City of Philadelphia failed to properly train and control its employees, and failed to take adequate precautions to ensure Plaintiffs' personal safety. In their Amended Complaint, Plaintiffs conclude that they were deprived of their civil rights "due to Plaintiff Holmes' race and/or color."

Standard of Review

In considering a motion to dismiss, a court must consider only those facts alleged in the complaint and accept all of the allegations as true. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3rd Cir. 1997). However, the court need not credit the plaintiff's "bald assertions" or "legal conclusions" where such

conclusions are unsupported by the pleadings. Morse, 132 F.3d at 906. A motion to dismiss may only be granted where the plaintiff's allegations fail to state any claim upon which relief could be granted. Morse, 132 F.3d at 906. The liberal requirements of federal notice pleading, however, require only that a complaint put the defendant on notice of the claims against him. Fed. R. Civ. P. 8(a); Seville Indus. Mach. Corp. v. Southmost Mach. Corp., 742 F.2d 786, 790 (3rd Cir. 1984).

Discussion

I. Municipal Liability Under 42 U.S.C. § 1983 and § 1985

Defendants first maintain that Counts I and II, alleging violations of 42 U.S.C. § 1983 and § 1985, fail to state a claim for municipal liability against Defendant City of Philadelphia.

42 U.S.C. § 1983 provides a cause of action against any "person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected" any person to the deprivation of a right protected by federal law or the United States Constitution. 42 U.S.C. § 1985 provides a similar cause of action where two or more people have conspired to deprive the plaintiff of a Constitutional right.

Liability under § 1983 or § 1985 will not be imposed on a municipality or government entity solely on a theory of

respondeat superior. Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691 (1978) (§ 1983 liability); Di Maggio v. O'Brien, 497 F. Supp. 870, 876 (E.D. Pa. 1980) (§ 1985 liability). Where, as here, the alleged tortfeasor is a municipal employee, the municipality will only be held liable if the employee's allegedly unconstitutional action is taken pursuant to a municipal policy or custom. Monell, 436 U.S. at 690-91; see also Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3rd Cir. 1996). Accordingly, a plaintiff seeking to recover from a municipality must (1) identify the allegedly unconstitutional policy or custom, (2) demonstrate that the municipality, through its deliberate and culpable conduct, was the "moving force" behind the injury alleged; and (3) demonstrate a direct causal link between the municipal action and the alleged deprivation of federal rights. Bd. of the County Comm'rs v. Brown, 520 U.S. 397, 404 (1997).

Plaintiffs in their Amended Complaint have not pled that Defendant City of Philadelphia was the "moving force" behind the alleged assaults by Officers Britten and Listren, or that those assaults occurred as a result of any official policy or custom established by the City of Philadelphia. Plaintiffs have likewise failed to assert that Defendant City of Philadelphia was on notice that such a constitutional violation was likely to occur and acted with "deliberate indifference" to this risk. See Bd. of the County Comm'rs v. Brown, 520 U.S. at 406-07; Maiale v.

Youse, No. 03-5450, 2004 US Dist. LEXIS 17442 at 24, 2004 WL 1925004 (E.D. Pa. 2004). Absent any allegation on Plaintiffs' part that a custom or policy established by the City of Philadelphia directly caused the alleged assaults, Plaintiffs' § 1983 and § 1985 claims against Defendant City of Philadelphia cannot stand.²

As Counts I and II of Plaintiffs' Amended Complaint in this matter fail to satisfy even the liberal notice pleading standard set forth in Fed. R. Civ. P. 8(a), this Court will dismiss them and grant Plaintiffs twenty days within which to file a Second Amended Complaint. See Shane v. Fauver, 213 F.3d 113, 116 (3d Cir. 2000) (where plaintiff's § 1983 claims are inadequately pled, district court should grant leave to amend the complaint).

II. § 1985 Conspiracy Claim Against Defendant Police Officers

Defendants next move to dismiss Count II of the Amended

² In their Memorandum of Law in Opposition to Defendants' Motion to Dismiss, Plaintiffs for the first time allege that Defendant City of Philadelphia was aware of "a history of allegations of police misconduct throughout Philadelphia," and that Defendant's "custom and policy was that there will be no disciplinary action or further training, when such assaults happen." (Plaintiff's Memorandum, p. 5). Plaintiffs' Memorandum also incorporates by reference various exhibits tending to demonstrate the "history" of police misconduct in the 25th District. However, as a motion to dismiss filed pursuant to Fed. R. Civ. P. 12 tests the legal sufficiency of a complaint itself, this Court may not properly consider any arguments or evidence presented outside the initial pleadings. Morse, 132 F.3d at 906.

Complaint with respect to Officers Britten and Listren.

To state a claim under 42 U.S.C. § 1985(3) for conspiracy to violate a plaintiff's constitutional rights, a plaintiff must allege: (1) a conspiracy; (2) motivated by a racial or class-based discriminatory animus designed to deprive a person or class of persons of the equal protection of the laws; (3) an act in furtherance of the conspiracy; and (4) an injury to the person or the deprivation of any right or privilege of citizenship. Lake v. Arnold, 112 F.3d 682, 685 (3rd Cir. 1997) (citing Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 268 (1993); United Bhd. of Carpenters and Joiners of Am., Local 610 v. Scott, 463 U.S. 825, 828-29 (1983); Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971)).

Plaintiffs' Amended Complaint merely alleges, in a conclusory fashion, that Defendants were conspirators engaged in a scheme to deprive Plaintiffs of their constitutional rights on the basis of Plaintiff Holmes' race, which is unspecified. This legal conclusion is unsupported by the pleadings, which do not indicate the nature of the race- or class-based "discriminatory animus" that motivated the alleged assault, or the specific nature of the Defendants' common scheme. Even under the liberal pleading requirements of Fed. R. Civ. P. 8(a), Count II of Plaintiffs' Amended Complaint fails to fairly put Defendant Officers Britten and Listren on notice of the claims against

them. Accordingly, leave will be granted to further amend Count II of the Amended Complaint.

III. Municipal Liability for State Tort Claims

Finally, Defendants contend that Counts III through X, alleging violation of a custodial relationship,³ false imprisonment, assault, intentional and negligent infliction of emotional distress, malicious prosecution, defamation, and interference with contractual relations, fail to state valid claims against Defendant City of Philadelphia.

Municipal entities generally enjoy absolute immunity from tort liability under the Political Subdivision Tort Claims Act. 42 Pa. Cons. Stat. § 8541. However, tort recovery may be permitted for negligent acts falling within eight enumerated categories. 42 Pa. Cons. Stat. § 8542(b) permits tort recovery against a municipality where a negligent act relates to one of the following: vehicle liability; care, custody, or control of personal property; real property; trees, traffic controls, or street lighting; utility service facilities; streets; sidewalks; or care, custody, or control of animals. Furthermore, the Political Subdivision Tort Claims Act expressly bars recovery

³ Defendants also contend that Count III, alleging violation of a custodial relationship, is duplicative of the 42 U.S.C. § 1983 claim. However, as Federal Rule of Civil Procedure 8(a) expressly permits parties to plead in the alternative, Defendants' argument offers no basis for dismissal.

against a municipality for intentional torts, including any acts which constitute "a crime, actual fraud, actual malice or, willful misconduct." 42 Pa. Cons. Stat. § 8542(a)(2).

In their Amended Complaint, Plaintiffs fail to plead any negligence-based tort claims against the City of Philadelphia which might fall within the eight enumerated exceptions set forth in 42 Pa. Cons. Stat. § 8542(b). Rather, Counts III through X all allege intentional torts of the kind expressly barred under the Political Subdivision Tort Claims Act. See, e.g., Hill v. Borough of Swarthmore, 4 F. Supp. 2d 395, 398 (E.D. Pa. 1998) (borough and police department were immune under Political Subdivision Tort Claims Act from arrestee's claims of violation of custodial relationship, false imprisonment, assault, loss of consortium, intentional infliction of emotional distress, negligent infliction of emotional distress, malicious prosecution, defamation, and interference with contractual relationship). Thus, Counts III through X must be dismissed with respect to Defendant City of Philadelphia.

An appropriate Order follows.

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FRANCIS SMITH,	:	No. 05-2909
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Plaintiffs	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, et al,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 4th day of August, 2005, upon consideration of Defendants' Motion to Dismiss (Doc. No. 3), and Plaintiffs' Response thereto (Doc. No. 5), it is hereby ORDERED that Defendants' Motion is GRANTED in part and DENIED in part, as follows:

(1) Count I, alleging violations of 42 U.S.C. § 1983, is DISMISSED WITHOUT PREJUDICE as against Defendant City of Philadelphia;

(2) Count II, alleging violations of 42 U.S.C. § 1985, is DISMISSED WITHOUT PREJUDICE as against all Defendants;

(3) Counts III through X, alleging state law tort claims, are DISMISSED as against Defendant City of Philadelphia.

It is FURTHER ORDERED that Plaintiffs are granted twenty (20) days from the date of this Order within which to file a Second Amended Complaint with respect to Counts I and II. No

further amendments will be granted.

BY THE COURT:

s/J. Curtis Joyner
J. CURTIS JOYNER, J.